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GUIDELINES ON THE APPLICATION
OF
THE INDIVIDUAL'S RIGHTS PROTECTION ACT
TO
A PERSON WITH A PHYSICAL CHARACTERISTIC
IN
SERVICES CUSTOMARILY AVAILABLE TO THE PUBLIC
OR
TENANCY

Alberta
HUMAN RIGHTS COMMISSION

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Alberta
HUMAN RIGHTS COMMISSION

Room 902, 10808 - 99th Avenue, Edmonton, Alberta, Canada T5K 0G2 403/427-3116

April, 1984

The Alberta Human Rights Commission developed the enclosed guidelines in response to public demands:

1. to provide a clearer interpretation and understanding of the application of the term "physical characteristics," as defined in the Individual's Rights Protection Act, relating to employment, tenancy and services customarily available to the public,

2. to provide a set of clearly-enunciated principles and guidelines for those persons affected by the provisions of the Individual's Rights Protection Act.

One of the primary purposes in creating such guidelines was to reduce the propensity for complaints by creating a clearer understanding of what is reasonably expected of a service provider, landlord or employer in meeting the needs of a person with a physical disability.

A second purpose was to address the responsibilities of all concerned parties in employment, tenancy and service situations.

More than 1,000 copies of the proposed guidelines and response forms were distributed to businesses and to organizations which deal with the physically disabled. The Commission also advertised in weekly newspapers and sought public participation and response.

To the hundreds who responded, the Commission would very much like to express its appreciation. The views expressed, both positive and negative, served as a basis for discussion and thorough review of the proposed guidelines by the Commission. This review has resulted in the finalization and approval of these guidelines.

Please feel free to contact the Commission if questions arise.

Sincerely,

Marlene Antonio (Mrs.)
Chairman

"...it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin..."

...From the Preamble to The
Individual's Rights Protection Act.

Alberta Human Rights Commission
April, 1984

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A. INTRODUCTION

The Individual's Rights Protection Act (I.R.P.A.) of Alberta was enacted in 1972 and amended on September 1, 1980 to include physical characteristics as a protected class. This Act is the anti-discrimination law of the province.

The I.R.P.A. applies to all provincial government departments and agencies as well as all businesses and industries under provincial jurisdiction in all facets of employment, business and tenancy policies, practices and referrals.

The Alberta Human Rights Commission, established in 1973, administers the I.R.P.A. The Commission has a two-fold function of education and enforcement.

Among other provisions, the I.R.P.A. makes it a discriminatory act to deny an individual services or tenancy on the basis of his/her physical characteristics.

Specifically, sections 3 and 4 of the Act state that:

3) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

a) deny to any person or class of persons any accommodation, services or facilities customarily available to the public, or

b) discriminate against any person or class of persons with respect to any accommodation, services or facilities customarily available to the public,

because of the race, religious beliefs, colour, sex, physical characteristics, ancestry or place of origin of that person or class of persons or of any other person or class of persons.

4) No person, directly or indirectly, alone or with

> another, by himself or by the interposition of another, shall
>
> (a) deny to any person or class of persons the right to occupy as a tenant any commercial unit or self-contained dwelling unit that is advertised or otherwise in any way represented as being available for occupancy by a tenant, or
>
> (b) discriminate against any person or class of persons with respect to any term or condition of the tenancy of any commercial unit or self-contained dwelling units,
>
> because of the race, religious beliefs, colour, sex, physical characteristics, ancestry or place of origin of that person or class of persons or of any other persons or class of persons.[1]

The purpose of this paper is to set out guidelines pursuant to sections 3 and 4 of the I.R.P.A., with respect to physical characteristics. These guidelines have been written to provide the public with a better understanding of this aspect of the I.R.P.A.

This paper provides definitions which aid in reading the guidelines, followed by a discussion of the basic principle on which the guidelines are based. The guidelines are then presented, followed by a discussion of the subject areas to which they apply.

* * * *

B. DEFINITIONS

The following definitions aid in reading the guidelines:

1. **Physical Characteristics** is defined in the I.R.P.A. as follows:

   "...any degree of physical disability, infirmity,

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[1] Individual's Rights Protection Act, Chapter I-2, RSA, 1980.

malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a guide dog, wheelchair or other remedial appliance or device".[2]

For the purpose of this paper only, the term functional impairment will take on the same meaning as physical characteristics as defined in the Act.

2. Accommodation, Services and Facilities

For the purpose of this paper, these terms include all accommodation, services and facilities customarily available to the public. Without limiting the generality of this definition, these terms include hotels, motels, eating and drinking establishments, public buildings, recreational facilities or programs, transportation, police services, insurance services, education facilities, entertainment facilities, and commercial outlets.

Where the term services is used, it will mean accommodation, services and facilities as defined above.

3. Tenancy

The term tenancy applies to publicly and privately-owned residential and sleeping occupancies, which may include the rental of houses, condominiums, apartment buildings, hotels and motels. In order to meet the needs of a person with a functional impairment, changes may have to be made to the physical environment associated with tenancy.

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2 Individual's Rights Protection Act, Chapter I - 2 , RSA, 1980.

This does not apply to an owner-occupied residence, the primary function of which is single family occupancy or to those buildings exempted under section 5 of the I.R.P.A.

* * * *

C. REASONABLE ACCOMMODATION - THE UNDERLYING PRINCIPLE FOR GUIDELINES ON THE APPLICATION OF THE INDIVIDUAL'S RIGHTS PROTECTION ACT TO A PERSON WITH A FUNCTIONAL IMPAIRMENT IN SERVICES OR TENANCY

The preamble to the Individual's Rights Protection Act states that "it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin..."[3]

In keeping with the above, and sections 3 and 4 of the I.R.P.A., these guidelines are based on a fundamental principle, accepted by the Alberta Human Rights Commission, that a person with a functional impairment should be able to participate, where possible, within the same environment enjoyed by a person without a functional impairment. This is the principle of reasonable accommodation. Further, having a functional impairment does not alter the rights and responsibilities of an individual as a member of society. Finally, services or rental units should never be designed to specifically exclude persons with a functional impairment.

As each situation is unique, it will be necessary to evaluate each individual set of circumstances with regard to the practice of reasonable accommodation.

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[3] Individuals Rights Protection Act, Chapter 1-2, RSA, 1980.

When the Commission is called upon to investigate a complaint, the Commission, in co-operation with the affected parties, will examine among others, the following criteria to determine whether reasonable accommodation is feasible:

1. availability of alternatives,
2. financial burden,
3. safety,
4. economy and efficiency,
5. other relevant legislation.

If circumstances dictate, an outside expert opinion may be sought by the Commission regarding the situation.

REASONABLE ACCOMMODATION IN PROVIDING SERVICES OR TENANCY

REASONABLE ACCOMMODATION MEANS THE ADAPTATION OF SERVICES, OR THE PHYSICAL ENVIRONMENT ASSOCIATED WITH TENANCY, TO ENABLE UTILIZATION OF THE SERVICE OR FACILITY BY A PERSON WHO MAY OTHERWISE BE RESTRICTED FROM USING THEM.

TO "REASONABLY ACCOMMODATE" MAY REQUIRE PHYSICAL ALTERATIONS, PROVISION OF TECHNICAL AIDS OR APPARATUS, OR RELOCATION OF PROGRAMS.

Denial of the advantages of services or tenancy to a individual with a functional impairment, on the basis of that individual's impairment, may be considered discriminatory. Further, it is incumbent upon a service provider or landlord to provide reasonable accommodation for the limitations or special needs of a person with a functional impairment.

A service provider or landlord may find that the following statements aid them in providing reasonable accommodation:

1. **A decision to provide services or tenancy to a functionally impaired person should not be based on assumptions about all persons having a given functional impairment. Every effort should be made to consider the specific limitations of the individual.**

2. If it is not possible for a service provider or landlord to reasonably accommodate a functionally impaired person in the usual manner, alternatives should be considered.

EXAMPLE

If total access to library facilities required that every book had to be available in braille, or that every community library branch had to have a reading machine, no library could fulfill the accommodation criteria. The result would be that library services, in this case, would be curtailed for economic reasons.

* * * *

D. GUIDELINES

(The following guidelines are subject to the principle of reasonable accommodation.)

I. ACCESSIBILITY

A PERSON WITH A FUNCTIONAL IMPAIRMENT SHOULD NOT BE DENIED ACCESS TO, NOR THE BENEFITS OF, A SERVICE OR TENANCY, ON THE BASIS OF HIS/HER FUNCTIONAL IMPAIRMENT.

The existence of a functional impairment is not in itself an acceptable basis for denying an individual benefits of or access to, services or tenancy, recognizing the concept of reasonable accommodation.

Accessibility to services or tenancy is measured by considering evidence that all persons receive equal delivery of the advantages that may result from the services or tenancy.

EXAMPLE

Cafes, hotels and motels which offer food and accommodation would demonstrate that these services are available to the physically disabled by providing ramps in place of steps and designated parking near an entrance.

II. RULES, STANDARDS AND REQUIREMENTS FOR THE USE OF A SERVICE OR TENANCY

THE SAME RULES, STANDARDS, AND ELIGIBILITY REQUIREMENTS FOR THE USE OF A SERVICE OR TENANCY, MUST APPLY TO A FUNCTIONALLY IMPAIRED PERSON AS APPLY TO ALL OTHER PERSONS.

It is, of course, common and accepted to establish eligibility requirements, rules and standards that must be met by any individual who wishes to participate in services and seek tenancy. For the purpose of the I.R.P.A., such rules must be reasonable and necessary for utilization. Rules or standards that exclude a person from participating because, for example, he/she is a member of a group rather than because he/she cannot fulfill the requirements, are unacceptable. The ability to adapt a service or a rental unit should be considered before a decision is made that a functionally impaired person is incapable of complying with established reasonable rules, standards or requirements.

EXAMPLE

While it may be standard procedure to demand a deposit of 20% for a pair of prescription glasses, it would be discriminatory to demand a deposit of 50% from a person because he/she was in a wheelchair.

III. ALTERNATIVES TO SERVICES OR TENANCY PROVIDED TO A PERSON WITH A FUNCTIONAL IMPAIRMENT

A. IF A FUNCTIONALLY IMPAIRED PERSON IS UNABLE TO USE OR BENEFIT FROM SERVICES CUSTOMARILY AVAILABLE TO THE PUBLIC OR TENANCY, BECAUSE OF HIS/HER IMPAIRMENT, THE SERVICE PROVIDER OR LANDLORD SHOULD ATTEMPT TO REASONABLY ACCOMMODATE THAT INDIVIDUAL BY PROVIDING AN ALTERNATIVE.

B. IN PROVIDING A FUNCTIONALLY IMPAIRED PERSON WITH AN ALTERNATIVE TO A SERVICE CUSTOMARILY AVAILABLE TO THE

PUBLIC OR TO TENANCY, THE SERVICE PROVIDER OR LANDLORD SHOULD CONSIDER THE FOLLOWING:

THE ALTERNATIVE RESULTS IN THE FUNCTIONALLY IMPAIRED PERSON BEING ABLE TO BENEFIT FROM WHAT IS CUSTOMARILY AVAILABLE TO THE PUBLIC.

In some circumstances it is impossible to provide a functionally impaired person with services or tenancy. In some of these circumstances, alternatives to the regular service or tenancy may be provided. With respect to services, all alternate provisions or modifications offered to the impaired should differ as little as possible from those customarily available to the public. The existence of specially designed services for functionally impaired persons should not preclude the requirement to continue to examine alternatives in order to provide access to regular services or rental units.

It may, of course, become evident that it is impractical or too costly to reorganize a service or a physical environment.

Example

Most football stadiums set aside an area, usually between the end zones and the 35-yard line, to accommodate persons in wheelchairs. Such accommodation may be considered reasonable.

However, it would be both costly and impractical for the stadium, for example, to designate an area between the 40-yard lines. Building a suitable ramp would be difficult, if not impossible, and the loss of revenue from seats in this area would be financially prohibitive.

IV. SAFETY

IT MAY BE REASONABLE TO DENY ACCESS TO A SERVICE OR TENANCY IF IT CAN BE SHOWN, THAT BECAUSE OF AN INDIVIDUAL'S PHYSICAL CONDITION, ACCESS TO AND USE OF A SERVICE OR A RENTAL UNIT WOULD BE A GREATER THAN NORMAL RISK TO THE SAFETY OF OTHERS.

NOTE: section 5 "Notwithstanding section 1, no person who is the owner of, or is responsible for the use, occupancy, construction or alteration of, a building as defined in the **Uniform Building Standards Act** shall, by reason only of the condition of the building, be found to have contravened section 3 or 4 as it relates to denial or discrimination on the basis of physical characteristics if he establishes that the building complies with the applicable requirements of that Act and the regulations under that Act."[3]

If it can be proven that, because of an individual's functional impairment, access to and use of a service or tenancy would be hazardous to his/her safety, or that of the other users of the facility, it may be reasonable to exclude that individual.

EXAMPLE

The proprietor of a movie theatre may not be obliged to accommodate a large number of wheelchair patrons, on a single occasion, if such accommodation would result in impeding exits.

The added hazard to all would justify a suggestion that the wheelchair patrons could be accommodated in smaller groups on several different occasions rather than one large group at once.

If an individual otherwise meets the reasonable rules, or eligibility requirements for use of a service, or for tenancy, and is capable of conforming to the rules, the service provider or landlord should provide evidence that there is reasonable probability that, because of the individual's physical characteristics, use of the service or tenancy would be a greater than normal risk with regards to the safety of others.

In conclusion, it is generally accepted that an individual is the best judge of his/her own abilities. In extending services or tenancy to members of the public with physical characteristics, this principle should be considered. The

3 Individuals Rights Protection Act, Chapter 1-2, RSA, 1980.

imposition of risks on others, however, may be considered reasonable grounds for exclusion.

Example

It would be unreasonable and discriminatory to require a functionally impaired person to prove that he/she can swim before entering a public pool, unless everyone is required to demonstrate the same level of ability.

* * * *

E. CONCLUSION

GUIDELINES ON THE APPLICATION OF THE INDIVIDUAL'S RIGHTS PROTECTION ACT TO A PERSON WITH A PHYSICAL CHARACTERISTIC IN SERVICES CUSTOMARILY AVAILABLE TO THE PUBLIC OR TENANCY have been developed to provide the public with assistance in complying with sections 3 and 4 of the Individual's Rights Protection Act.

The guidelines are based on a fundamental principle accepted by the Alberta Human Rights Commission - that persons with a functional impairment should be accommodated, where possible, within the environment enjoyed by persons without a functional impairment. This is the principle of reasonable accommodation. A working definition of reasonable accommodation has been provided. Further, having a functional impairment does not alter the rights and responsibilities of an individual as a member of society. Finally, services or rental units should not be designed to exclude persons with a functional impairment.

The guidelines address four major areas - accessibility to services or tenancy; rules, standards and requirements for use of services or tenancy; alternatives to services or tenancy; and safety.

* * * *

F. SUMMARY OF GUIDELINES

I. ACCESSIBILITY

A PERSON WITH A FUNCTIONAL IMPAIRMENT SHOULD NOT BE DENIED ACCESS TO, NOR THE BENEFITS OF, A SERVICE OR TENANCY, ON THE BASIS OF HIS/HER FUNCTIONAL IMPAIRMENT.

* * * *

II. RULES, STANDARDS, AND REQUIREMENTS FOR THE USE OF A SERVICE TENANCY

THE SAME RULES, STANDARDS, AND ELIGIBILITY REQUIREMENTS FOR THE USE OF A SERVICE OR TENANCY, MUST APPLY TO A FUNCTIONALLY IMPAIRED PERSON AS APPLY TO ALL OTHER PERSONS.

* * * *

III. ALTERNATIVES TO SERVICES OR TENANCY PROVIDED TO A PERSON WITH A FUNCTIONAL IMPAIRMENT

A. IF A FUNCTIONALLY IMPAIRED PERSON IS UNABLE TO USE OR BENEFIT FROM SERVICES CUSTOMARILY AVAILABLE TO THE PUBLIC OR TENANCY, BECAUSE OF HIS/HER IMPAIRMENT, THE SERVICE PROVIDER OR LANDLORD SHOULD ATTEMPT TO REASONABLY ACCOMMODATE THAT INDIVIDUAL BY PROVIDING AN ALTERNATIVE.

B. IN PROVIDING A FUNCTIONALLY IMPAIRED PERSON WITH AN ALTERNATIVE TO A SERVICE CUSTOMARILY AVAILABLE TO THE PUBLIC OR TO TENANCY, THE SERVICE PROVIDER OR LANDLORD SHOULD CONSIDER THE FOLLOWING: THE ALTERNATIVE RESULTS IN THE FUNCTIONALLY IMPAIRED PERSON BEING ABLE TO BENEFIT FROM WHAT IS CUSTOMARILY AVAILABLE TO THE PUBLIC.

* * * *

IV. SAFETY

IT MAY BE REASONABLE TO DENY ACCESS TO A SERVICE OR TENANCY IF IT CAN BE SHOWN, THAT BECAUSE OF AN INDIVIDUAL'S PHYSICAL CONDITION, ACCESS TO AND USE OF A SERVICE OR A RENTAL UNIT WOULD BE A GREATER THAN NORMAL RISK TO THE SAFETY OF OTHERS.

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